



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
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CHICAGO, IL 60604-3590

US EPA RECORDS CENTER REGION 5



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DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT
SOLID HAZARDOUS WASTE MANAGEMENT
REPLY TO THE ATTENTION OF

DE-9J

Mr. Michael E. Sickles, Chief
Corrective Action Section
Hazardous Waste Management Branch
Solid and Hazardous Waste Management
Indiana Department of Environmental Management
P.O. Box 6015
100 North Senate Avenue
Indianapolis, Indiana

Re: Administrative Order on Consent
Docket No. R8H-5-99-002
Franklin Power Products, Inc./Amphenol
Franklin, Indiana
IND 044 587 848

Dear Mr. Sickles:

Please find enclosed a copy of the fully executed Administrative Order on Consent. The Order imposes the selected remedy for the facility as specified in the Interim Final Decision.

If you have any questions, please call me at (312) 886-4568, or Paul Little, Chief, Michigan/Wisconsin Section at (312) 886-4460.

Sincerely,

William Buller, Project Coordinator
Enforcement and Compliance Assurance Branch
Waste, Pesticides and Toxics Division
MI/WI Section

enclosure

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:)

FRANKLIN POWER PRODUCTS INC)

AND)

AMPHENOL CORPORATION)

FRANKLIN, INDIANA)

ADMINISTRATIVE ORDER
ON CONSENT

U.S. EPA I.D.# IND 044 587 848)

U.S. EPA DOCKET NO.:

R8H-5-99-002

Proceeding under Section
3008(h) of the Resource
Conservation Recovery
Act, as amended,
42 U.S.C. §6928(h).

I. JURISDICTION

This Administrative Order on Consent (Order) is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (U.S. EPA) by Section 3008(h) of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §6928(h). The authority vested in the Administrator has been delegated to the Regional Administrator in Region 5 and further delegated to the Chief of the Enforcement and Compliance Assurance Branch; Waste, Pesticides and Toxics Division, by

3. Statement of Purpose. For purposes of this Order only, pursuant to this Order Additional Work may only be required to address releases at or from the Facility.
4. Administrative Record shall mean the record compiled and maintained by U.S. EPA supporting this Order.
5. Area of Concern shall mean any area of the Facility under the control or ownership of the Owner Respondent or operator where a release to the environment of hazardous waste(s) or hazardous constituents has occurred, or is suspected to have occurred, or may occur, regardless of the frequency or duration of the release.
6. CERCLA shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§9601, et seq.
7. Comply or compliance may be used interchangeably and shall mean implementation and completion of work required by this Order of a quality approvable by U.S. EPA and in the manner and time specified in this Order or any modification thereof which is made in accordance with the terms of this Order, its attachments or any modification thereof, or written U.S. EPA directives, except to the extent that U.S. EPA directives issued after the effective date of this Order modify the Scope of Work. Respondents must meet both the quality and timeliness components of a particular requirement to be considered in compliance with the terms and conditions of this Order.
8. Contractor shall include any subcontractor, consultant or laboratory retained to conduct or monitor any portion of the work performed pursuant to this Order.
9. Corrective measures shall mean those measures or actions necessary to control, prevent, or mitigate the release or potential release of hazardous waste or hazardous constituents into the environment.
10. Corrective Measures Implementation or CMI shall mean those activities necessary to initiate, complete, monitor, and maintain the remedy U.S. EPA has selected to protect human health and/or the environment from the release or potential release of hazardous wastes, or hazardous constituents, into the environment from the Facility. The CMI requirements are detailed in the CMI Scope of Work included as Attachment A.

19. a) Owner Respondents shall refer to Franklin Power Products Inc. who is current owner and operator of the Facility and any successor or assign.
- b) Performing Respondent shall refer to Amphenol Corporation, who by contractual arrangement has assumed certain responsibilities for past practices, and who with the cooperation of the Owner respondent, has assumed primary responsibility for performance of the SOW except for those tasks, such as institutional controls, restrictions on real estate rights to the Facility, or access to the Facility which require the action or approval of the Owner Respondent.
20. Receptors shall mean those humans, animals, or plants and their habitats which are or may be affected by releases of hazardous waste or hazardous constituents from or at the Facility.
21. RCRA Facility Investigation or RFI shall mean the investigation and characterization of the source(s) of contamination and the nature, extent, direction, rate, movement, and concentration of the source(s) of contamination and releases of hazardous waste, including hazardous constituents, that have been or are likely to be released into the environment from the facility.
22. Solid Waste Management Unit or SWMU shall mean any discernible unit at which solid wastes have been placed at any time irrespective of whether the unit was intended for the management of solid or hazardous waste. Such units include any area at the Facility where solid wastes have been routinely and systematically released.
23. Scope of Work or SOW shall mean the outline of work Respondents must use to develop all workplans and reports required by this Order as set forth in this Order and its Attachments. All SOW Attachments and modifications or amendments thereto, are incorporated into this Order and are an enforceable part of this Order.
24. Stabilization shall mean controlling or abating immediate threats to human health and/or the environment from releases and/or preventing or minimizing the spread of contaminants while long-term corrective measures alternatives are being evaluated.

IV. PARTIES BOUND

A. This Order shall apply to and be binding upon U.S. EPA, each Respondent and their successors and assigns, and upon all persons, including but not limited to contractors and consultants, acting on behalf of Respondents.

B. No change in ownership or corporate or partnership status relating to the Facility will in any way alter Respondents' responsibility under this Order. Any conveyance of title, easement or other interest in the Facility, or a portion of the Facility, shall not affect Respondents' obligations under this Order. Respondents agree to be responsible for and liable for any failure to carry out all the activities required of Respondents by the terms and conditions of the Order, regardless of Respondents' use of employees, agents, contractors, or consultants to perform any such tasks.

C. Respondents shall provide a copy of this Order to all contractors, subcontractors, laboratories, and consultants retained to conduct or monitor any portion of the work performed pursuant to this Order within fourteen (14) days of the effective date of this Order or date of such retention, whichever occurs later, and shall condition all such contracts on compliance with the terms of this Order.

opinion developed by the Contractor in the completion of the work under this Order nor a waiver of estoppel of any of Respondent's rights to challenge any aspect of the work performed, findings or other determinations made by U.S. EPA under this Order.

V. FINDINGS OF FACT

A. Respondent Amphenol Corporation is a company which began doing business in the State of Indiana on or about December 19, 1986, and is a person as defined in Section 1004 (15) of RCRA, 42 U.S.C. §6903(15) and 40 CFR 260.10, and 329 Indiana Administrative Code (IAC). Respondent Franklin Power Products, Inc. is a company which began doing business in the State of Indiana on or about June 2, 1983, and is a person as defined in Section 1004 (15) of RCRA, 42 U.S.C. §6903(15) and 40 CFR 260.10, and 329 Indiana Administrative Code (IAC).

B. A previous owner of the Facility, Bendix Corporation, operated the Facility as a hazardous waste management facility on and after November 19, 1980, the applicable date which renders the Facility subject to the interim status requirements under Sections 3004 and 3005 of RCRA, 42 U.S.C. 6924 and 6925.

C. Pursuant to Section 3010 of RCRA, 42 U.S.C. 6930, Bendix corporation notified U.S. EPA of its hazardous waste activity. In its notification dated August 18, 1980, Bendix Corporation

(4) a 1000-gallon, in-ground, concrete cyanide overflow vault.

F. In 1986, Respondent Amphenol acquired ownership of the Facility, and in 1989 the Facility was sold to Franklin Power Products, Inc. Franklin Power Products, Inc. is the current owner and operator of the Facility.

G. On November 27, 1990, U.S. EPA issued an Administrative Order by Consent, pursuant to Section 3008(h) of RCRA. Neither of the Respondent was a generator of hazardous waste at the Facility at any time relevant to the Consent Order. The Order required Respondents to: implement selected interim measures; complete a RCRA Facility Investigation (RFI); and perform a Corrective Measures Study (CMS).

H. In April 1997, U.S. EPA issued a Statement of Basis which was made available to the public for a forty-five (45) day comment period from April 15, 1997, to May 30, 1997.

I. On August 19, 1997, the Regional Administrator signed a RCRA Interim Final Decision for the Facility. The Interim Final Decision prescribes the following corrective measures:

- (1) implementation of institutional controls consisting of a facility deed restriction, restriction of water well drilling permits, and advisory of confined space entry to sewer manholes to prevent contact with contaminants
- (2) operation of an existing on-site groundwater recovery system that is to be upgraded;

wastes or hazardous constituents within the meaning of Section 3001 of RCRA, 42 U.S.C. §6921, and 40 CFR Part 261.

D. There has been a release of hazardous wastes or hazardous constituents into the environment at and from Respondents' Facility.

E. The actions required by this Order are necessary to protect human health and the environment.

VII. PROJECT COORDINATOR

A. Within ten (10) days of the effective date of this Order, U.S. EPA and Respondents shall each designate a Project Coordinator and shall notify each other in writing of the Project Coordinator it has selected. Each Project Coordinator shall be responsible for overseeing the implementation of this Order and for designating a person to act in his/her absence. The U.S. EPA Project Coordinator will be U.S. EPA's designated representative for the Facility. To the maximum extent practicable, all communications between Respondents and U.S. EPA, and all documents, reports, approvals, and other correspondence concerning the activities performed pursuant to this Order shall be directed through the Project Coordinators.

C. All work undertaken pursuant to this Order shall include and be performed in a manner consistent with: the Scope of Work for the Corrective Measures Implementation (CMI) Program set forth in the Attachment A; the RCRA Interim Final Decision for the Facility set forth in Attachment B; all approved workplans and other submittals including plans and schedules for Additional Work required pursuant to paragraph N below; the Quality Assurance Project Plan; the Health and Safety Plan; and applicable U.S. EPA guidance documents.

D. Within thirty (30) days of the effective date of this Order Owner Respondent shall submit to U.S. EPA a copy of a filed and recorded deed restriction in accordance with TASK I of Attachment A, and verification that the confined space entry restrictions have been implemented in accordance with TASK I of Attachment A.

E. Respondents shall upgrade the On-site Groundwater Recovery System by installing electric pumps in the existing recovery wells, and installing an additional recovery well. The upgraded system shall be in full compliance with the City of Franklin and State requirements for discharge of constituents to the atmosphere and discharge of the treated water. The upgraded system shall be fully operational within sixty (60) days of the effective date of this Order, and remain operational until the performance standards are achieved. Upon completing the upgrade,

H. Within one hundred (120) days of approval of the Final Design by U.S. EPA, the Final Design shall be fully operational and continue to remain operational until the performance standards are obtained.

I. Pursuant to TASK IV of Attachment A, Respondents shall perform an investigation to determine if contaminants at the Facility have migrated to the Indiana-American Webb Well Field. Within ninety (90) days of the effective date of this Order, Respondents shall submit a report to U.S. EPA which presents the results of the investigation. The report shall include: sufficient groundwater analytical data (with installation and sampling of additional monitoring wells as needed), and groundwater modeling as appropriate, to provide a projection of contaminant migration from the Facility to the Webb Well Field; all information obtainable from the Indiana-America Water Company regarding pump/aquifer test data for the Webb Field wells; and a rigorous discussion of the geochemistry of the contaminant constituents found at the Facility and the Webb Well field. Should the results of the investigation, or additional data developed by U.S. EPA, provide sufficient evidence that contamination from the Facility is impacting the Webb Well Field, Respondents shall submit a plan, including a schedule, to address the matter within forty five (45) days of notification in writing by U.S. EPA that such determination has been made. Upon U.S.

L. If Respondents conclude that the performance standards specified in the approved Final Design have been attained to a degree such that the operation of the Air Sparge/Soil Vapor Extraction System and/or the Groundwater Recovery system may be modified as prescribed in the Final Design, prior to instituting any operational modification(s), Respondents shall provide forty-five (45) days advance notice of such modification in writing to U.S. EPA. Sufficient data to support the operational modification shall be provided with the notification.

M. Interim Measures

1. In the event Respondents identify an immediate or potential threat to human health and/or the environment, discover new releases or potential releases of hazardous waste or hazardous constituents, or discover new solid waste management units not previously identified, at or from the Facility, Respondents shall notify the U.S. EPA Project Coordinator, orally within forty-eight (48) hours of discovery and notify U.S. EPA in writing within seven (7) days of such discovery summarizing the immediacy and magnitude of the potential actual threat(s) to human health or the environment. Upon written request of U.S. EPA, Respondents shall submit to U.S. EPA an Interim Measures (IM) Workplan, and implementation schedule. If U.S. EPA determines that immediate action is required, the U.S. EPA Project Coordinator may orally authorize Respondents to act prior to U.S.

1. U.S. EPA may determine or Respondents may propose that certain tasks, including but not limited to investigatory work, engineering evaluation, design/construction, or procedure/methodology modifications, are necessary in addition to or in lieu of the tasks included in any U.S. EPA-approved workplan, when such additional work is necessary to meet the purposes set forth in Section III. Statement of Purpose. If U.S. EPA determines that Respondents should perform Additional Work, U.S. EPA will notify Respondents in writing and specify the basis for its determination that the Additional Work is necessary.

2. Within twenty (20) days after the receipt of such determination, Respondents shall have the opportunity to meet or confer with U.S. EPA to discuss the Additional Work.

3. If required by U.S. EPA, Respondents shall submit for U.S. EPA approval a workplan for the Additional Work, or a Design for additional construction/installation. U.S. EPA will specify the conditions that such workplan or Design is to address. Such workplan shall be submitted by Respondents within forty five (45) days of receipt of U.S. EPA's determination that additional work is necessary and upon receipt of U.S. EPA's specifications for such work, or according to an alternative written schedule established by U.S. EPA.

in accordance with the schedule and provisions contained therein. If the Second Revised Submittal is disapproved by U.S. EPA, U.S. EPA may deem Respondents to be in violation of this Order pursuant to Section XV(B), unless Respondents invoke dispute resolution procedures.

D. Any U.S. EPA approved report, workplan, design, specification, or schedule shall be deemed incorporated into this Order upon its written approval by U.S. EPA. Prior to this written approval, no workplan, Design, report, specification, or schedule shall be construed as approved and final. Oral advice, suggestions, or comments given by U.S. EPA representatives will not constitute an official approval, nor shall any oral approval or oral assurance of approval be considered binding unless confirmed in writing by the parties.

E. All work performed pursuant to this Order shall be under the direction and supervision of a professional engineer, hydrologist, geologist, or environmental scientist, with expertise in hazardous waste cleanup. Respondents' contractor or consultant shall have the technical expertise sufficient to adequately perform all aspects of the work for which it is responsible. Within fourteen (14) days of the effective date of this Order, Respondents shall notify the U.S. EPA Project Coordinator in writing of the name, title, and qualifications of

B. The laboratory to be used for analysis of chemical parameters shall either be the laboratory that was used in performing the RCRA Facility Investigation, or a laboratory which has been audited and approved by U.S. EPA in the last two (2) years. The laboratories used for all other testing and analysis shall have proper certification.

C. As appropriate, analyses shall be performed according to U.S. EPA methods included in "Test Methods for Evaluating Solid Waste" (SW-846, Third Edition, 1997, Update III) or other methods deemed satisfactory to U.S. EPA. Laboratories used by Respondents for analyses and testing shall participate in a quality assurance/quality control program equivalent to that which is followed by U.S. EPA. As part of such a program, and upon request by U.S. EPA, Respondents shall assure such laboratories perform analyses of samples provided by U.S. EPA to demonstrate the quality of the analytical data.

D. The names, addresses and telephone numbers of the laboratories Respondents propose to use, shall be provided to U.S. EPA within thirty (30) days of the effective date of this Order.

XI. SAMPLING AND DATA/DOCUMENT AVAILABILITY

A. Respondents shall submit to U.S. EPA upon request the results of all sampling and/or tests or other data generated by

such confidentiality claim accompanies the information when it is submitted to U.S. EPA, the information may be made available to the public by U.S. EPA without further notice to Respondents. Respondents agree not to assert any confidentiality claim with regard to any information regarding release or potential release of hazardous waste or hazardous waste constituents, the extent of migration or concentration of any hazardous waste or hazardous waste constituents, and any physical or analytical data.

XII. ACCESS

A. U.S. EPA, its contractors, employees, and/or any duly designated U.S. EPA representatives are authorized to enter and freely move about the Facility pursuant to this Order for the purposes of, inter alia: interviewing Facility personnel and contractors; inspecting records, operating logs, and contracts related to the Facility; reviewing the progress of Respondents in carrying out the terms of this Order; conducting such tests, sampling, or monitoring as U.S. EPA deems necessary; using a camera, sound recording, or other documentary type equipment; and verifying the reports and data submitted to U.S. EPA by Respondents, all as necessary for the purpose of overseeing Respondent's Compliance with this Order. Respondents agree to provide U.S. EPA and its representatives access at all reasonable times to the Facility and subject to paragraph 2 below, to any other property under control of Respondents to which access is

U.S. EPA's Project Coordinator has a copy of any access agreement(s). In the event that agreements for access are not obtained within thirty (30) days of approval of any workplan for which access is required, or of the date that the need for access became known to Respondents, Respondents shall notify U.S. EPA in writing within fourteen (14) days thereafter of both the efforts undertaken to obtain access and the failure to obtain access agreements. U.S. EPA may, at its discretion, assist Respondents in obtaining access. In the event U.S. EPA obtains access, Respondents shall undertake U.S. EPA-approved work on such property.

C. The Respondents agree to indemnify the United States as provided in Section XXI. Indemnification of the United States Government, for any and all claims arising from activities on such property.

D. Nothing in this section limits or otherwise affects U.S. EPA's right of access and entry pursuant to applicable law, including RCRA and CERCLA.

E. Nothing in this section shall be construed to limit or otherwise affect Respondents' liability and obligation to perform corrective action including corrective action beyond the Facility boundary, notwithstanding the lack of access subject to section XII.

C. All documents pertaining to this Order shall be stored by the Respondents in a centralized location to afford ease of access by U.S. EPA or its representatives.

XIV. REPORTING AND DOCUMENT CERTIFICATION

A. Beginning with the first full month following the effective date of this Order, Respondents shall provide U.S. EPA with progress reports. Progress reports shall be submitted monthly and are to be postmarked by the tenth (10th) day of every month. The progress reports shall conform to requirements in the relevant Scope of Work contained in Attachment A and at a minimum: (1) describe the activities completed during the past month and the activities scheduled for the next month, (2) note any down time incurred by the Groundwater Recovery System and/or the AS/SVE System which exceeded twenty four (24) hours in duration, including a description of the problem and the maintenance performed; and (3) identify any requirements under this Order that were not completed as provided and any problems or anticipated problems in complying with this Order. U.S. EPA may adjust the frequency of progress reports to be consistent with site-specific activities.

B. Documents submitted pursuant to this Order shall be in writing and shall be either hand delivered, sent by certified

D. Any report or other document submitted by Respondents pursuant to this Order which makes any representation concerning Respondents' compliance or noncompliance with any requirement of this Order shall be certified by a responsible corporate officer of Respondent making such representation or a duly authorized representative. A responsible corporate officer means: (1) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or (2) the project coordinator for the Facility, if delegated the authority from a responsible corporate officer.

E. The certification required by paragraph four (D) above, shall be in the following form:

"I certify that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to evaluate the information submitted. I certify that the information contained in or accompanying this submittal is true, accurate, and complete. As to those identified portion(s) of this submittal for which I cannot personally verify the accuracy, I certify that this submittal and all attachments were prepared in accordance with procedures designed to

stipulated penalties as set forth below upon written demand from U.S. EPA work.

(1) For failure to commence, perform, or complete any, in a manner acceptable to U.S. EPA or at the time required pursuant to this Order: \$1000 per day for the first seven days of such violation, \$2000 per day for the eighth through twenty one days of such violation, and \$4000 per day for each day of such violation thereafter;

(2) For failure to complete and submit any workplans or reports (other than progress reports) as required pursuant to this Order, or for failure to notify U.S. EPA of immediate or potential threats to human health and/or the environment, new releases of hazardous waste and/or hazardous constituents and/or new solid waste management units not previously identified, at or from the Facility, as required by this Order: \$1000 per day for the first seven days of such violation, \$2000 per day for the eighth through twenty one days of such violation, and \$4000 per day for each day of such violation thereafter;

(3) For failure to complete and submit other written submittals not included in paragraph 1(b) of this section in a manner acceptable to U.S. EPA or at the time required pursuant to this Order: \$750 per day for the first seven days of such violation, \$1750 per day for the eighth through twenty one days

C. All penalties owed to the United States under this section shall be due and payable within thirty (30) days of the Respondents' receipt from U.S. EPA of a written demand for payment of the penalties, unless Respondents invoke the dispute resolution procedures under Section XVI. Dispute Resolution.. Such a written demand will describe the violation in reasonable detail, will indicate the amount of penalties due, and show how the penalties are calculated.

D. Interest shall begin to accrue on any unpaid stipulated penalty balance beginning on the thirty-first day after Respondents' receipt of U.S. EPA's demand letter. Interest shall accrue at the Current Value of Funds Rate established by the Secretary of the Treasury. Pursuant to 31 U.S.C. §3717, an additional penalty of 6% per annum on any unpaid principal shall be assessed for any stipulated penalty payment which is overdue for 90 or more days.

E. All penalties shall be made payable by certified or cashier's check to the United States of America and shall be remitted to:

United States Environmental Protection Agency
Region 5
Office of the Comptroller
P.O. Box 60673
Chicago, Illinois 60604

All such checks shall reference the name of the Facility, the Respondents' names and addresses, and the U.S. EPA docket number

I. No payments under this section shall be tax deductible for federal tax purposes.

XVI. DISPUTE RESOLUTION

A. The parties shall use their best efforts to informally and in good faith resolve all disputes or differences of opinion. The parties agree that the procedures contained in this section are the sole procedures for resolving disputes arising under this Order. If Respondents fail to follow the requirements contained in this section then they shall have waived their right to further consideration of the disputed issue.

B. If Respondents disagree, in whole or in part, with any written decision ("Initial Written Decision") by U.S. EPA pursuant to this Order, Respondents' Project Coordinator shall notify the U.S. EPA Project Coordinator of the dispute. The Project Coordinators shall attempt to resolve the dispute informally.

C. If the Project Coordinators cannot resolve the dispute informally, Respondents may pursue the matter formally by placing its objections in writing. Respondents' written objections must be directed to the U.S. EPA Project Coordinator. This written notice must be mailed within twenty (20) days of Respondents' receipt of the Initial Written Decision. Respondents' written objection must set forth the specific points of the dispute, the

authority to make final decisions on Orders). Based on the administrative record, the U.S. EPA Director which conducted the conference shall provide to Respondents its written decision on the dispute (U.S. EPA Dispute Decision") which shall include a response to Respondents' arguments and evidence. Such decision shall be incorporated into and become an enforceable element of this Order, but will not be considered final Agency action for purposes of judicial review.

F. Except as provided in Section XV. Delay in Performance/Stipulated Penalties, the existence of a dispute as defined in this section and U.S. EPA's consideration of matters placed into dispute shall not excuse, toll, or suspend any compliance obligation or deadline required pursuant to this Order during the pendency of the dispute resolution process.

XVII. FORCE MAJEURE AND EXCUSABLE DELAY

A. Force majeure, for purposes of this Order, is defined as any event arising from causes not foreseen and beyond the control of Respondents or any person or entity controlled by Respondents, including but not limited to Respondents' contractors, that delays or prevents the timely performance of any obligation under this Order despite Respondents' best efforts to fulfill such obligation. The requirement that Respondents exercise "best efforts to fulfill such obligation shall include, but not be

opinion of Respondents, such event may cause or contribute to an endangerment to public health or the environment. Respondents shall include with any notice all available documentation supporting its claim, if any, that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Respondents from asserting any claim of force majeure for that event. Respondents shall be deemed to have notice of any circumstances of which their contractors had or should have had notice.

C. If U.S. EPA determines that the delay or anticipated delay is attributable to a force majeure event, the time for performance of such obligation under this Order that is affected by the force majeure event will be extended by U.S. EPA for such time as is necessary to complete such obligation. An extension of the time for performance of such obligation affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation, unless Respondents can demonstrate that more than one obligation was affected by the force majeure event. If U.S. EPA determines that the delay or anticipated delay has been or will be caused by a force majeure event, U.S. EPA will notify Respondents in writing of the length of the extension, if any, for performance of such obligations affected by the force majeure event.

the requirements of this Order, including without limitation the assessment of penalties under §3008(h)(2) of RCRA, 42 U.S.C. §6928(h)(2). This Order shall not be construed as a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, and/or authorities, civil or criminal, which U.S. EPA has under RCRA, CERCLA, or any other statutory, regulatory, or common law authority of the United States.

C. U.S. EPA reserves the right to disapprove of work performed by Respondents pursuant to this Order and to order that Respondents perform additional tasks as set forth in this Order.

D. U.S. EPA reserves the right to perform any portion of the work consented to herein or any additional site characterization, feasibility study, and remedial work as it deems necessary to protect human health or the environment after providing Respondents with notice. The accrual of stipulated penalties under this Consent Order shall terminate as of the date U.S. EPA gives notice that it is assuming performance of all or portions of the work as to such portions of the work being assumed.

U.S. EPA may exercise its authority under CERCLA to undertake response actions at any time. In any event, U.S. EPA reserves its right to seek reimbursement from Respondents for costs incurred by the United States. Notwithstanding compliance with the terms of this Order, Respondents are not released from

conditions at the Facility, with the exception of their right to contest U.S. EPA's jurisdiction to issue or enforce this Order and its right to contest the terms of this Order. Respondents have entered into this Order in good faith without trial or adjudication of any issue of fact or law.

G. Notwithstanding any other provision of this Order, no action or decision by U.S. EPA pursuant to this Order, including without limitation, decisions of the Regional Administrator, the Director of the Waste Pesticides and Toxics Division, or any authorized representative of U.S. EPA, shall constitute final agency action giving rise to any right of judicial review prior to U.S. EPA's initiation of a judicial action to enforce this Order, including an action for penalties or an action to compel Respondents' compliance with the terms and conditions of this Order.

H. In any action brought by U.S. EPA for a violation of this Order, Respondents shall bear the burden of proving that U.S. EPA's actions were arbitrary and capricious and not in accordance with law.

I. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive or other appropriate relief relating to the facility, Respondents shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel,

local, State, and Federal laws and regulations. Respondents shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations.

XXI. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT

Respondents agree to indemnify and save and hold harmless the United States Government, its agencies, departments, agents, and employees, from any and all claims or causes of action arising from or on account the negligence of Respondents or their officers, employees, agents, independent contractors, receivers, trustees, and assigns in carrying out activities required by this Order. This indemnification shall not be construed in any way as affecting or limiting the rights or obligations of Respondents or the United States under their various contracts. Respondents shall not be responsible for indemnifying the U.S. EPA for claims or causes of action solely from or on account of acts or omissions of U.S. EPA.

XXII. FINANCIAL ASSURANCE

A. Respondents shall purchase or secure and maintain in force for the duration of the remedial action work, comprehensive general liability insurance with limits of 10 million dollars, combined single limit, naming as additional insured the United States. In addition, for the duration of this Order, Respondents shall satisfy, or shall ensure that their contractors or

XXIII. MODIFICATION

A. This Order may be modified by mutual agreement of U.S. EPA and Respondents. Any agreed modifications shall be in writing, be signed by all parties, shall have as their effective date the date on which they are signed by U.S. EPA, and shall be incorporated into this Order.

B. Any requests for a compliance date modification or revision of an approved workplan requirement must be made in writing. Such requests must be timely and provide justification for any proposed compliance date modification or workplan revision. U.S. EPA has no obligation to approve such requests, but if it does so, such approval must be in writing. Any U.S. EPA-approved compliance date or workplan modification shall be incorporated by reference into the Order upon its approval by U.S. EPA.

C. This section shall not apply to any U.S. EPA dispute decision, U.S. EPA approved report, workplan, specification and schedule which are deemed to be incorporated into this Order.

XXIV. SEVERABILITY

If any provision or authority of this Order or the application of this Order to any party or circumstances is held by any judicial or administrative authority of competent jurisdiction to be invalid, the application of such provisions to other parties or

have been achieved, Respondents may remove or withdraw the deed restriction required pursuant to Section VII(D).

B. The previous RCRA 3008(h) RFI/CMS Consent Order, dated November 27, 1990, will be terminated when this Order becomes effective.

XXVI. SURVIVABILITY/PERMIT INTEGRATION

Except as otherwise expressly provided in this section, this Order shall survive the issuance or denial of a RCRA permit for the Facility, and this Order shall continue in full force and effect after either the issuance or denial of such permit.

Accordingly, Respondents shall continue to be liable for the performance of obligations under this Order notwithstanding the issuance or denial of such permit. If the Respondents are issued a RCRA permit and that permit expressly incorporates all or a part of the requirements of this Order, or expressly states that its requirements are intended to replace some or all of the requirements of this Order, Respondents may request a modification of this Order and shall, with U.S. EPA approval, be relieved of liability under this Order for those specific obligations.

ATTACHMENT A

CORRECTIVE MEASURES IMPLEMENTATION PROGRAM
SCOPE OF WORK
FRANKLIN POWER PRODUCTS, INC./AMPHENOL

Pursuant to Section VIII of the Consent Order, Respondents shall initiate institutional controls which include the following actions:

- A. A deed restriction shall be filed and recorded for the 15 acre property owned by Franklin Power Products, Inc. located at the intersection of Hurricane Road and Hamilton Avenue. The deed shall restrict future land use of this property to industrial/commercial use only, and restrict installation of Drinking water wells at the property.
- B. Standard confined space entry procedures shall be implemented for all sewer manholes on facility property, for storm sewer manholes at all off-site locations, and for all sanitary sewer manholes at Forsythe Street.

TASK II Upgrade of the Groundwater Recovery System.

Pursuant to Section VIII.E of the Consent Order, the Groundwater Recovery System shall be upgraded, reevaluated, and the results of the evaluation reported to U.S. EPA. Electric pumps shall be installed in the existing recovery wells, and an additional recovery well located west of MW-28 near the facility property boundary shall be installed. Upon completion of the upgrade, Respondents shall perform an evaluation of the system by measuring water levels at adjacent wells and piezometers, collecting other data as appropriate, and submit a report to U.S. EPA which presents the results of such evaluation and an as-built well design for the new recovery well.

TASK III Corrective Measure Final Design

Respondents shall collect pre-design data as needed, and perform a pilot study and other preliminary testing as needed to support a Final Design for the air sparge/soil vapor extraction (AS/SVE) system. Draft and Final Designs shall be submitted in accordance with Section VIII of the Consent Order, and at a minimum, include the following:

- A. Results of all testing and analysis of the pre-design investigations
 - 1. tables, laboratory reports, illustrations and discussion of results
- B. AS/SVE design
 - 1. location and design features
 - sparge wells

prescribed methods for any testing/analysis not included in the QAPP.

HEALTH AND SAFETY PLAN

All work performed under this Order shall be in accordance with the Health and Safety Plan dated October, 1988, supplemented as needed.

INTERIM FINAL DECISION/RESPONSE TO COMMENTS

FOR

FRANKLIN POWER PRODUCTS/AMPHENOL FACILITY

FRANKLIN, INDIANA

IND 044 587 848

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
(U.S. EPA)

Hurricane Creek. The higher pump rates and the additional recovery well of the upgraded system will draw in a greater expanse and volume of groundwater and create more effective capture of contaminated groundwater. Upon completion of the recovery system upgrade, the system will be reevaluated.

In its comment concerning the Statement of Basis, the Facility stated that the east-west aligned sparge/SVE system near the southern facility boundary (included in U.S. EPA's proposed remedy) may not provide significant additional remediation to that of the focused (north-south aligned) sparge/SVE system addressing the highly contaminated area near the sanitary sewer. The comment also suggested that upgrades to the on-site recovery system should also be considered.

U.S. EPA evaluated the Facility's comment and concluded that the additional recovery well located to the west of the existing recovery wells can provide equivalent, if not better, control of off-site groundwater contaminant migration than a line of sparge/SVE wells. A recovery well installation will also require less development work and have fewer maintenance complications than a sparge/SVE system. Further, a sparge/SVE system achieves the most effective remediation when directed at the focal point of contamination.

Therefore, the remedy selected by U.S. EPA does not include an east-west aligned sparge/SVE system; instead it incorporates a sparge/SVE system that focuses on the highly contaminated area at the sanitary sewer line. Additionally, this sparge/SVE system is extended to address the area where concentrations of volatile organic compounds generally exceed 10,000 micrograms per kilogram in soils and 5000 micrograms per liter in groundwater (see figure 4-1).

Indiana-American's comment stated that they had reason to believe that contamination at the facility is impacting their well field that provides water to the citizens of Franklin, and that they would submit their findings on this matter in the near future. U.S. EPA has received their hydrological report on this matter and finds that the report presents a reasonable possibility of such impact. Therefore, the remedy includes the requirement that possible contaminate migration from the facility to the well field be investigated further. If such investigation presents significant evidence that the facility is impacting the well field, appropriate corrective action will be required.

The remedy selected by U.S. EPA has several advantages. The remedy can be readily implemented thereby expediting the remediation of the site. The sparge/SVE system which addresses

Response - The various aspects of the remedy and also the RCRA corrective action process were discussed with the reporter. The RCRA corrective action process involves extensive oversight by U.S. EPA to assure that the work is completed to the satisfaction of the public as well as U.S. EPA and the Respondents. Workplans and reports are reviewed by U.S. EPA and revised as needed. As is often the case in environmental investigations, data development reveals unexpected conditions. In the case of the subject facility, the storm sewer and sanitary sewer at the site acted as contaminant transport mechanisms which resulted in a complex contaminant distribution.

Comment - Citizen noted that The FPP/A facility is located within 0.6 of mile from a well field that is used to provide water to the City of Franklin. The chemical, cis-1,2-dichloroethylene, has been identified in the well nearest the facility. Comment also stated that this well field is not yet monitored in the Indiana Wellhead Protection Program and requested that movement of the groundwater contaminant plume to the well field be monitored.

Response - Public water supply systems are regulated by the State under the authority of the Safe Drinking Water Act and water provided to citizens must meet drinking water standards. Under Indiana's Wellhead Protection Rule which became effective on March 28, 1997, public water supply systems are required to complete the elements of a Well Head Protection Program that is approved by the State. A Well Head Protection Program for the Franklin water supplier (Indiana-American Water Company, Inc.) is under development. Indiana-American has sampled and analyzed the wells for critical constituents on a quarterly basis since 1988. The data shows that concentrations of cis 1,2-dichloroethylene in the well of concern have been as high as 109 micrograms per liter (State drinking water standard is 70 micrograms per liter). It is U.S. EPA's understanding that, prior to delivery to the consumer, the water is blended to reduce the contaminant concentrations to levels below drinking water limits. The matter of monitoring contaminant movement from the facility to the well field is discussed in the comment/response below.

Comment - Indiana-American Water Company stated that they provide drinking water service to nearly 45,000 people in Johnson County, Indiana. The comment also noted that they have reason to believe that contamination at the FPP/A facility may be impacting their operations and that they expect to present their findings in the near future.

Response to Comment - In accordance with Agency policy, U.S. EPA, follows up on all information of this nature. If such

the June 1997 report, were taken into consideration by U.S. EPA and are reflected in the selected remedy previously described.

FUTURE CORRECTIVE ACTION ACTIVITIES

Pursuant to the Administrative Order on Consent under which the corrective action activities were performed, a new Administrative Order on Consent is to be developed upon selection of the final remedy. Under the new Order, corrective measure design details, specifics of the institutional controls, monitoring program specifics, and cleanup standards will be established. To determine whether specific community concerns arise during the corrective measures implementation process, information will be provided to the public through press releases or other appropriate means. The June 1997 on-site recovery system evaluation report, and Indiana-American's hydrological report, have been added to facility repository at the Johnson County Library. Critical documents as developed will also be added to the repository in the future.

DECLARATIONS

Based on the administrative record compiled for this corrective action, I have determined that the selected remedy to be ordered at this site is appropriate and will be protective of human health and the environment.

Murielle J. Jordan

Acting Regional Administrator
U.S. EPA, Region 5

8-19-97

Date

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04/23/91	Kevin Pierard, USEPA	Ltr. re: USEPA review of the Quality Assurance Project Plan (QAPJP)	J. Michael Jarvis, Amphenol
05/13/91	Robert E. Aten, WW Engineering & Scien	Memo: Report of Activities for RFI/CMS, April, 1991	William Buller, USEPA
05/28/91	Robert E. Aten, WW Engineering & Scien	Memo: Revised Report of Activities for RFI/CMS, April, 1991	William Buller, USEPA
07/26/91	James H. Keith, WW Engineering & Scien	Ltr. re: Supplemental Information and Explanation for EPA QAPJP Comments	William Buller, USEPA
12/12/91	Susan Sylvester, USEPA	Ltr. re: USEPA approved, revised Quality Assurance project Plan dated 5/25/91	J. Michael Jarvis, Amphenol
07/01/92	Joseph M. Boyle, USEPA	Ltr. re: A copy of the Technical Memorandum (draft) dated 6/23/92	Michael Jarvis, Amphenol
07/06/92	James H. Keith, WW Engineering & Scien	Memo: Report of Activities for Former Amphenol RFI/CMS, June, 1992	William Buller, USEPA
09/02/92	Samuel S. Waldo, Amphenol	Ltr. re: Recent conversation with Susan Gard & Jim Keith	William Buller, USEPA
09/08/92	James H. Keith, WW Engineering & Scien	Memo: Report of Activities for Former Amphenol RFI/CMS, August 1992	William Buller, USEPA
09/09/92	Susan W. Gard, Curtis Publishing Co	Ltr. re: former Bendix Facility, Hurricane Road Franklin, In.	William Buller, USEPA
10/16/92	Michael E. Sickels, IDEM	Ltr. re: RCRA Facility Investigation Phase II Work Plan	Susan Sylvester, USEPA
10/19/92	Joseph M. Boyle, USEPA	Ltr. re: Work Plan "Installation of Additional Monitoring Wells & Sampling, RFI	J. Michael Jarvis, Amphenol
10/26/92	James H. Keith, WW Engineering & Scien	Ltr. re: USEPA Region V written approval of Work Plan	William Buller, USEPA
11/09/92	James H. Keith, WW Engineering & Scien	Memo: Report of Activities for Former Amphenol RFI/CMS, October, 1992	William Buller, USEPA
11/23/92	James H. Keith, WW Engineering & Scien	Ltr. re: Completion of the Geoprobe study	William Buller, USEPA
12/09/92	James H. Keith, WW Engineering & Scien	Memo: Report of Activities for Former Amphenol RFI/CMS, November, 1992	William Buller, USEPA
12/16/92	James H. Keith, WW Engineering & Scien	Ltr. re: Telephone conversation, revised SOP for collecting ground water	William Buller, USEPA
12/21/92	Susan W. Gard, Franklin Power Prod	Ltr. re: Request for extension of time to submit draft RFI Report	William Buller, USEPA
12/28/92	James H. Keith, WW Engineering & Scien	Ltr. re: Telephone conversation, review of SOP for collecting ground water	William Buller, USEPA
01/06/93	James H. Keith, WW Engineering & Scien	Ltr. re: January 4, 1993 Telephone conversation	William Buller, USEPA
01/11/93	James H. Keith, WW Engineering & Scien	Memo: Report of Activities for Former Amphenol RFI/CMS, December, 1992	William Buller, USEPA
02/08/93	James H. Keith, WW Engineering & Scien	Memo: Report of Activities for Former Amphenol RFI/CMS, January, 1993	William Buller, USEPA
02/08/93	Michael E. Sickels, IDEM	Ltr. re: RCRA Facility Investigation Supplement to Phase II Work Plan	Susan Sylvester, USEPA
02/09/93	Joseph M. Boyle, USEPA	Ltr. re: USEPA receipt of 12/21/92 letter from Susan Gard requesting extension of time	J. Michael Jarvis, Amphenol
04/27/93	James H. Keith, WW Engineering & Scien	Ltr. re: Enclosed for review five copies of the draft RFI report	William Buller, USEPA
07/09/93	James H. Keith, WW Engineering & Scien	Ltr. re: Five copies of additional pages & revised pages & sheets to be inserted	William Buller, USEPA
08/20/93	Michael E. Sickels, IDEM	Ltr. re: IDEM review of Franklin Power Products' 4/27/93 RFI report	Susan Sylvester
10/06/93	James H. Keith, WW Engineering & Scien	Ltr. re: September 2, 1993 letter to Mr. Jarvis regarding the RFI Report	William Buller, USEPA
11/15/93	Joseph M. Boyle, USEPA	Ltr. re: USEPA review of RCRA Facility Investigation (RFI) report with revisions	J. Michael Jarvis, Amphenol
12/14/93	James H. Keith, WW Engineering & Scien	Ltr. re: Transmittal letter by WW Engineering & Science	Joseph M. Boyle, USEPA
01/21/94	Joseph M. Boyle, USEPA	Ltr. re: Response to 12/14/93, letter	J. Michael Jarvis, Amphenol
02/01/94	Samuel S. Waldo, Amphenol	Ltr. re: January 21, 1994 the collection of additional ground water samples	Joseph M. Boyle, USEPA
02/08/94	Bijan S. Saless, WW Engineering & Scien	Ltr. re: Summit Environmental Group, Inc.,	William Buller, USEPA

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05/28/96	Paul Little, USEPA	Ltr. re: Franklin Power Products/Amphenol	Samuel Waldo, Amphenol
06/03/96	James H. Keith, Earth Tech	Memo: Report of additional CMS Activities for RFI/CMS May 1996	William Buller, USEPA
06/14/96	Samuel S. Waldo, Amphenol	Ltr. re: AOC dated 11/27/90-report of Additional Corrective Measures Studies	Paul Little, USEPA
06/17/96	James H. Keith, Earth Tech	Ltr. re: Copies of report of Additional Corrective Measures Studies	William Buller, USEPA
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11/19/96	James H. Keith, Earth Tech	Ltr. re: AOC dated 11/27/96-report of Additional Corrective Measures Studies	Paul Little, USEPA
11/25/96	James H. Keith, Earth Tech	Ltr. re: AOC dated 11/27/90-report of Shallow Ground Water Sampling	Paul Little, USEPA
11/27/96	Samuel S. Waldo, Amphenol	Ltr. re: On Site Recovery System Evaluation Work Plan	William Buller, USEPA
12/11/96	William Buller, USEPA	Ltr. re: Administrative Order on Consent (dated 11/27/90)	Samuel Waldo
01/02/97	Samuel S. Waldo, Amphenol	Ltr. re: Future Land Use Considerations-attached Response to OSWER Directive No. 9355.7-04	William Buller, USEPA
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04/04/97	Dave Novak, USEPA	Ltr. re: USEPA proposing a remedy for cleanup of soil and ground-water	William Buller, USEPA
04/10/97	James H. Keith, Earth Tech	Memo: Report of Onsite Recovery System Evaluation Activities	William Buller, USEPA
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07/07/97	James H. Keith, Earth Tech	Memo: Report of Onsite Recovery System Evaluation Activities	William Buller, USEPA
07/09/97	Eric W. Thornburg, Ind. Amer. Water	Ltr. re: Contaminated Groundwater and Soil Franklin Power Products/Amphenol Facility	William Buller, USEPA